IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

Crl.MC.No. 503 of 2007()

CC.344/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT, PARAPPANANGADI (SPLIT UP FROM CC NO.405/01) IN CRIME NO.257/99 OF THENHIPALAM POLICE STATION.

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PETITIONER:

P. MUHAMMED @ KUNHUTTY,
S/O. ALAVI HAJI,
PAZHERI HOUSE,
PERUVALLOOR AMSOM,
TIRURANGADI TALUK.

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENTS:

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1. THE STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

2. HAMZATH C.P., S/O. MOHAMMED,
CHAKKINTE PARAMBIL,
AKOLIL HOUSE,
PERUVALLUR,
MALAPPURAM DISTRICT.

BY P.P. SRI. S.U. NAZAR.
BY ADV. SRI.K.MUHAMMED SALAHUDHEEN

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 503 of 2007

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Dated this the 26th day of February, 2007

O R D E R

The petitioner is the second accused in a prosecution under Sections 341 and 355 r/w. 34 I.P.C. The petitioner was not available for trial. The co-accused was tried, found not guilty and acquitted by the learned Magistrate. The case against the petitioner has been split up and proceedings are now pending as C.C.No.344 of 2006. The petitioner was not available and therefore the learned Magistrate has now issued a non-bailable warrant of arrest to secure the presence of the petitioner.

2. The learned counsel for the petitioner submits that the petitioner is willing to appear before the learned Magistrate. All the offences are compoundable. The petitioner and the defacto complainant have settled their disputes and the defacto complainant has compounded the offences alleged against the petitioner. The defacto complainant is also represented by counsel before me. He confirms that the matter has been settled between the parties.

3. The prayer raised in this petition is that the composition may be accepted and invoking the powers under Section 482 Cr.P.C. the proceedings may be quashed.

4. I do not find any merit in the prayer. Powers under Section 482 Cr.P.C. are to be invoked in exceptional cases in aid of justice. Such power is extra ordinary inherent power vested in this Court. It is not to be invoked as a matter of routine. Compelling reasons must be shown to the satisfaction of the court to persuade the court to invoke such power. In every prosecution where the offences are compoundable and the parties have compounded the offence, they cannot be expected to run to this Court with a prayer that powers under Section 482 Cr.P.C. may be invoked. Such invocation may not result in injustice, but it will not be possible for this Court to undertake such work and even hard cases should not persuade this Court to lay down bad law. I am not persuaded in the facts and circumstances of this case that powers under Section 482 Cr.P.C. can or ought to be invoked.

5. It is not as though the petitioner is without any remedy. He can appear before the learned Magistrate along with the defacto complainant and represent before the learned Magistrate that the offences are

compoundable and they may be permitted to compound the offences. When such a request is made and identity of the defacto complainant is shown to the satisfaction of the learned Magistrate, there can be no question of the learned Magistrate not accepting the composition and adjourning the case unnecessarily to any future date. A user friendly court shall immediately consider the petition on merits and pass appropriate orders. Postponing such a case in a heartless manner is not expected of a judicial functionary.

6. Though I am not inclined to invoke the powers under Section 482 Cr.P.C., I make the specific observation that if the petitioner appears before the learned Magistrate and applies for composition of the offence and the defacto complainant also confirms the composition, the learned Magistrate must proceed to pass appropriate orders on merits on the date of appearance itself. To avoid any unnecessary dispute about the identity of the defacto complainant, the learned Magistrate can insist on proper identification of the the defaco complainant by the counsel or any other person. The parties shall give notice to the Public Prosecutor. He can enquire and take instruction as to whether the matter is settled or not.

7. This Crl.M.C. is accordingly dismissed. In the peculiar facts and circumstances of this case, where the petitioner undertakes to appear before

the learned Magistrate along with the defacto complainant on 5.3.2007, I direct that the warrant of arrest shall not be executed till that date.

(R. BASANT)
Judge

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